



May 7, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BILLIE J. LONGSTRETH	:	BEFORE THE
Appellant pro se	:	BOARD OF PATENT
CABBAGE CUTTER	:	APPEALS AND
Application No.: 09/025,896	:	INTERFERENCES
Filing Date: Feb.18, 1998	:	
2204 Roseanne Court	:	
Fairborn, Ohio 45324	:	

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APPELLANT'S APPEAL BRIEF

The applicant, Billie J. Longstreth, Appellant pro se, has appealed the patent examiner's rejection of claim for Patent Application No. 09/025,896, a cabbage cutter.

REAL PARTY OF INTEREST

Billie J. Longstreth, appellant pro se, 2204 Roseanne Court, Fairborn, Ohio 45324.

RELATED APPEALS AND INTERFERENCES

The appellant was notified through an Office Communication dated April 11, 2000 from Charles Goodman, patent examiner, that my patent application, 09/025,896, for a cabbage cutter had been abandoned because I had failed to timely file a proper reply to a Patent Office Communication dated August 25, 1999. On April 19th, after receiving the Notice of Abandonment, I called Mr. Goodman to inform him that there must be some mistake because I had responded within the time limit on November 4, 1999 with

amendments attached. During that telephone conversation, Mr. Goodman suggested that I send in a "Request for Reconsideration." I followed up this telephone conversation with a letter dated April 28, 2000 with postal receipts attached. In response to my letter dated April 28, 2000 questioning the abandonment of my application, I received an Interview Summary from Mr. Goodman, dated July 3, 2001, stating that my patent application was abandoned because it appeared some of the submitted papers after Final were not matched with the file in a timely manner due to inadvertent delay from the Office and that whether or not the Examiner or the Office may do something about this was yet to be determined, and that my letter would be responded to in due course. On August 2, 2001, I filed Form PTO/SB/64, a "Petition for Revival of an Application for Patent Abandoned Unintentionally," with the Office of Petitions in accordance with 37 CFR 1.137(b) along with the required fee of \$620.00. Then on October 25, 2001, I filed a "Request for Continued Examination" along with the required fee of \$370.00 to continue the prosecution of my patent application.

STATUS OF CLAIMS

(1) The claim of the claimed invention stands rejected by the patent examiner under 35 U.S.C. 102(b) as being anticipated by Seib et al because Seib et al discloses a stoma flange cutter comprising all the elements claimed including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover; and the claim was not given significant patentable weight since it is a device to cut cabbage and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. And the claimed invention was not given significant patentable weight by the examiner because of the way the device is formed.

(2) The claim of the claimed invention stands rejected by the patent examiner under 35.U.S.C. 103(a) which forms the basis for obviousness rejections. The examiner rejected the claim because he believes the differences between the claimed invention and the prior art are such that they would be obvious to a person having ordinary skill in the art.

STATUS OF AMENDMENTS

A substitute specification filed on October 25, 2001 has been entered. The proposed drawing correction filed on August 2, 2001 has been approved. Amendment to claim, claim #7, filed on November 14, 2002 was rejected. Appellant filed arguments to these claim rejections, 35 U.S.C 102(b) & 35 U.S.C. 103(a), on April 2, 2003. The Patent Examiner, Charles Goodman, found these arguments non-persuasive.

SUMMARY OF INVENTION

(See corresponding reference numerals on the attached drawing)

The claimed invention is a non-powered, hand-operated device that has been designed specifically to cut and chop cabbage comprising a hollow, metal, cylindrical body **1** having two ends, that when placed in a perpendicular position, has a circular top **2** and a circular bottom **3** connected by the cylindrical body wall **1**. The circular top **2** is closed and covered with a permanently affixed cap **4** that extends slightly over onto the exterior wall of the cylindrical body **1** to serve as a handgrip and provide additional strength and durability to the cabbage cutter. The circular bottom rim **3** is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping means **3** that can be sharpened should it become dulled with use. The cabbage cutter has a removable protective cover **5**, contiguous with the cutting and chopping means **3**, that when placed over the cutting and chopping means **3** serves as a protective shield from injury, and protects the cutting and chopping means **3** from becoming damaged when the device is not in use or stored.

The placement of the permanently affixed cap (handgrip) **4** over the closed, metal, circular top **2** adds substantial strength and durability and distinguishes this cabbage cutter from all other non-powered, hand-operated devices in the art that are designed with open top rims, removable tops, and/or removable handgrips.

This cabbage cutter works best when the cabbage head is cut into chunks, and placed in a large container, and the person using the device grasps the cap (handgrip) **4** and brings the circular cutting and chopping means **3** down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. This cabbage cutter was designed and constructed for strength and durability and can easily, efficiently, and

effectively cut through the thick stalks and tightly overlapping leaves.

This cabbage cutter is simply designed, is easy to use, requires no assembly, and has no parts to malfunction during use. Removing the protective cover 5 from the cutting and chopping means 3 readies the device for use. The cabbage cutter is inexpensive to manufacture and, therefore, inexpensive to purchase. The cabbage cutter is easy to clean, dishwasher safe, and takes only a small space to store when not in use.

ISSUES

(1) Whether claim for claimed invention, cabbage cutter, is unpatentable because an apparatus anticipated by Seib et al, stoma flange cutter, comprises all the elements claimed.

(2) Whether the claimed invention was given significant patentable weight because it is an apparatus to cut cabbage and if the manner in which the claimed invention's intended use differentiates the claimed invention from the prior art, and whether the differences in the two devices, the cabbage cutter and the stoma flange cutter, was given significant patentable weight.

(3) The legitimacy of the obviousness rejections cited by the examiner.

GROUPING OF CLAIMS

The claimed invention, the cabbage cutter, is a one piece, non-powered, hand-operated device comprising a cylindrical body wall, a closed circular top with a permanently affixed handgrip, an open circular bottom rim filed or rubbed down to a smooth, thin, sharp cutting and chopping means with a removable protective cover. The claimed invention was designed specifically to cut and chop cabbage, one independent claim.

ARGUMENTS

(1) Claim Rejection under 35 U.S.C. 102:

(a) The Examiner, Charles Goodman, rejected the appellant's claim under 35 U.S.C. 102(b) as being anticipated by Seib et al because Seib discloses a stoma flange cutter comprising all the elements claimed in the appellant's claimed invention, the cabbage cutter, including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. The appellant argues that two devices can comprise the same elements and still be physically and mechanically different. It is the result of the interrelation or arrangement of these elements in their entity that create the whole device to make each device different from the other. This is the case with the stoma flange cutter anticipated by Seib et al and the claimed invention, the cabbage. Seib's stoma flange cutter differs from the appellant's claimed invention, the cabbage cutter, in that the stoma flange cutter comprises two sections, a top section and a bottom section that are separable and movable. The circular cutter that has been compared to the claimed invention, is press fitted into a suitable groove, with support, on the first surface of the top section of the stoma flange cutter with the sharpened edge extending away from surface. The second section (bottom section) of the stoma flange cutter has first and second spaced surface portions. The cutting element is adapted to cut in cooperation with the second section, and the cutting element can be adapted to flip end-to-end when one end becomes dull, whereas, the claimed invention, the cabbage cutter, comprises only one section, a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device. The bottom of the cabbage cutter is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge. The cabbage cutter has a single cutting edge that cannot be adapted to flip end-to end as the stoma flange cutter due to the closed top and permanently affixed handgrip on the opposite end, but the single cutting edge of the cabbage cutter can be sharpened if the cutting and chopping edge should become dulled from extensive use. When the stoma flange cutter is not in use, the device is inserted into an open ended envelope (package cover) means that is square in configuration with the lateral dimensions similar to the diametric extent of the device where sections are effectively held together for protection, storage, and transportation, whereas, the cabbage cutter has a removable protective cover, contiguous with the cutting and chopping edge, that is placed over the cutting and chopping edge to serve as a

shield from injury and to protect the cutting and chopping edge from becoming damaged when the device is not in use or stored. Material is inserted between the two sections of the stoma flange cutter for cutting and then the sections are pushed together (one section in each hand) and rotated (if necessary) relative to each other. More particular, between pressure applied to and slight rotation of cutter relative to surface, the flange material is cut so that a flange having an appropriately sized hole is provided for its intended use, whereas, the cutting and chopping edge of the cabbage cutter is located on the open bottom rim of the cabbage cutter and the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. Although the two devices do comprise the same parts per se, the claimed invention, the cabbage cutter, is physically and operationally different from Seib's stoma flange cutter to be patentable.

(b) The fact that the claimed invention cuts cabbage was not given significant patentable weight by the Examiner since the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior apparatus satisfying the claimed structural limitations. The appellant argues that the device, stoma flange cutter, anticipated by Seib et al is not capable of cutting cabbage and the claimed invention, cabbage cutter, is not capable of cutting a stoma flange.

(2) Claim Rejection under 35 U.S.C. 103:

The Examiner used 35 U.S.C. 103(a) which forms the basis for all obviousness rejections as basis for rejecting the claimed invention, the cabbage cutter. 35 U.S.C. 103(a) reads "A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patent ability shall not be negated by the manner in which the invention was made." The appellant argues that the physical appearance of the stoma flange cutter and the way the device operates is significantly different from the cabbage cutter. The stoma flange cutter as a whole is squarish in configuration with two sections that are attached to

each other, whereas, the cabbage cutter as a whole is a single round cylinder. The physical, mechanical and operational differences between the stoma flange cutter and the claimed invention, cabbage cutter, are such that they would not be obvious to a person with ordinary skills in the field. The appellant argues that the stoma flange cutter would not be easily recognized as a cutter because of the physical shape of the device and because the cutting element, that has been compared to the claimed invention, the cabbage cutter, is imbedded within the top section of the device and not easily visible.

Respectfully
Submitted,


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APPENDIX

CLAIMS

I claim a cabbage cutter that is non-powered and hand-operated for cutting and chopping cabbage comprising a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device; the bottom is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge that can be sharpened if the cutting and chopping edge should become dulled from extensive use; the device has a removable protective cover, contiguous with the cutting and chopping edge, that when placed over the cutting and chopping edge serves as a shield from injury, and protects the cutting and chopping edge from becoming damaged when the device is not in use or stored; the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size.

CABBAGE CUTTER
 BILLIE JEAN LONGSTRETH
 09/025,896

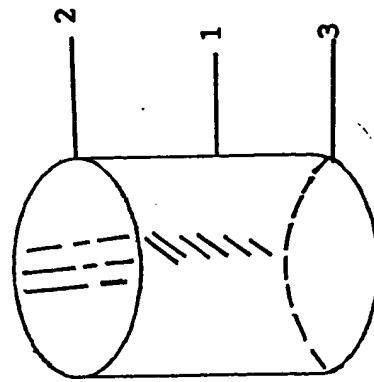


FIGURE 1

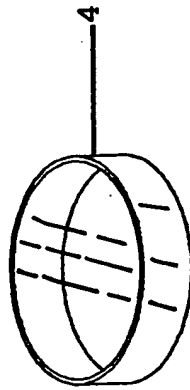


FIGURE 2

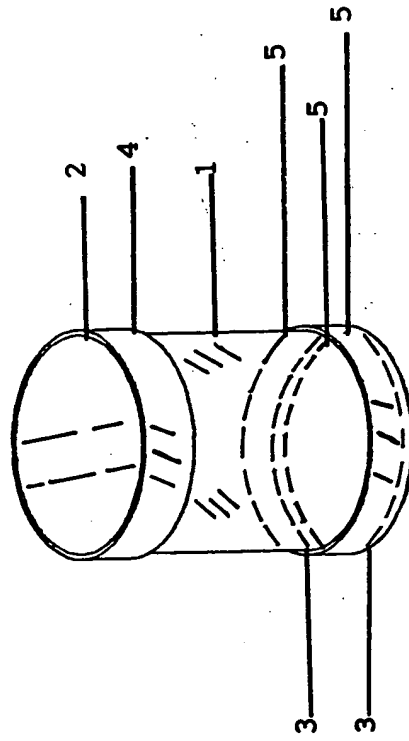


FIGURE 4

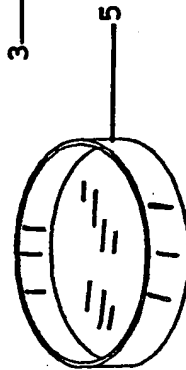


FIGURE 3

